

REMARKS

With this Response, Applicants respectfully request that claims 3, 6, 12, 22, 26, and 28 be canceled without prejudice. Additionally, claims 1, 8, 13-17, 24, and 27 are amended. Therefore, claims 1-2, 3-5, 7-11, 13-21, 23-25, 27, and 29 are pending.

DOUBLE PATENTING REJECTION

Claims 1, 13, 17 and 24 were rejected on the grounds of nonstatutory obviousness-type double patenting as being unpatentable over claims 1, 7, 8, 12 and 18 of U.S. Patent Application Serial No. 10/879,766 (U.S. Patent Application Publication No. 2005/023941). Applicants acknowledge that the identified U.S. Patent Application is based (specifically is a Continuation-in-Part) of the present Patent Application. Although not specified in the Office Action, Applicants note that the rejection is necessarily a **provisional** double-patenting rejection, seeing that the identified Patent Application is not yet an issued patent. See MPEP § 804, and especially Charts I-A and I-B.

Applicants acknowledge the provisional double-patenting rejection, and will address the rejection if and when the rejection is finalized as a non-provisional double-patenting rejection.

To the extent that claim amendments either in this case, or the above-identified U.S. Patent Application obviate the provisional double-patenting rejection, Applicants respectfully request that the rejection be withdrawn.

CLAIM OBJECTIONS

Claims 13 and 16 were objected to for perceived informalities. Specifically, the Office found the term "chipset" capable of causing confusion in what was claimed. In an attempt to further prosecution, Applicants have amended these claims herein to recite a "hardware circuit." Therefore, Applicants submit that the objection is overcome, and respectfully request that the objection be withdrawn.

REJECTIONS UNDER 35 U.S.C. § 101

Claims 17-23 were rejected under 35 U.S.C. § 101 as being directed to non-statutory subject matter. Specifically, these claims were found to not produce a useful, concrete, and tangible result. Applicants kindly point out that the "useful, concrete, and tangible result" is an

exception to the judicial exceptions of statutory subject matter. The Office Action fails to establish that the claims fall within the judicial exception, and thus evaluation of whether or not the claims satisfy the exception to the exception is improper. See MPEP § 2106(IV). However, Applicants suppose that the rejection intended by the Office was that the claims are capable of an interpretation covering carrier waves, seeing the independent claim did not explicitly recite features directed to a tangible storage medium. In the interest of advancing prosecution of this case, Applicants have amended independent claim 17 herein to recite a "machine-accessible **storage** medium having content **stored thereon**...", which Applicants submit is directed to a statutory storage medium. Therefore, Applicants respectfully request that the rejection be withdrawn.

REJECTIONS UNDER 35 U.S.C. § 103

Claims 1-2, 4, 6-7, 13-14, 17-18, 20, 22-25, and 27-28

These claims were rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,157,616 of Whitehead (hereinafter "Whitehead") in view of U.S. Patent No. 5,220,564 of Tuch et al. (hereinafter "Tuch"). Applicants submit that these claims are not rendered obvious by the cited references for at least the following reasons.

Of these claims, claims 1, 13, 17, and 24 are independent claims. Each of these claims recites features directed to setting a transmission characteristic of a device based on a transmission characteristic received from a remote device in the network.

Claims 1 and 17 recite features directed to determining "a local transmission threshold ... indicating a threshold level of interference" tolerable to a local wireless network node, and receiving a "transmission threshold indicating a threshold level of interference that is tolerable for ... a remote network node." The hardware settings of the local network node are adjusted **based on the local transmission threshold and the threshold received from the remote network node.**

Claim 13 recites features directed to a "carrier sensing sensitivity **based at least in part on a carrier sensing level determined for**" a wireless electronic device and based on "a carrier sensing level received from a remote wireless electronic device...."

Claim 24 recites features directed to "determine a carrier sensing threshold ... based at least in part on ... **a physical carrier sense threshold for the apparatus ... and based at least in part on a remote carrier sensing threshold of a remote wireless network device....**"

The Office Action acknowledges on page 5 that Whitehead fails to disclose or suggest basing a transmission characteristic of one device on the transmission characteristic of another device in the network. The Office Action asserts Tuch cures this deficiency in Whitehead. Applicants traverse. Tuch stores a threshold value determined for its transmitter, and subsequently senses the transmission channel again to determine a new threshold value, which the system compares to its own stored threshold value. The threshold value can then be adjusted if there is a change detected. The reference fails to disclose or suggest anything related to a threshold value of a remote device. The fact that the device receives data messages from a remote device suggests nothing but the known standard operation of the system to transmit and receive messages, and sensing the channel for transmission. In contrast, Applicants' claims recite features directed to basing a transmission characteristic of one device on the transmission characteristic of the one device and **on the transmission characteristic of another device in the network**. Whether alone or in combination, the references fail to disclose or suggest at least one feature of the claimed invention, and so fail to render obvious the invention as recited in the independent claims. See MPEP § 2143. The remaining dependent claims are nonobvious over the cited references for at least the same reasons as their respective independent claims. MPEP § 2143.03.

Claims 3, 16, 19 and 26

These claims were rejected under 35 U.S.C. § 103(a) as being unpatentable over Whitehead and Tuch in view of U.S. Patent No. 6,911,948 of Foore et al. (hereinafter "Foore"). These claims depend from independent claims discussed above. The deficiencies of Whitehead and Tuch are discussed above with respect to the independent claims. Foore fails to cure the deficiencies of Whitehead and Tuch. Foore discusses comparing states of a virtual carrier sense mechanism and a physical carrier sense mechanism (apparently trying to determine if both would allow transmission on a medium). Whether or not the reference mentions carrier sensing, the reference fails to cure the deficiencies pointed out above with respect to the independent claims.

No transmission characteristic is based on a transmission characteristic of another device. At most the reference suggests preventing a device from transmitting based on a state of another device, but fails to disclose or suggest basing a transmission characteristic of one device on the transmission characteristic of another. Thus, whether alone or in combination, the cited references are incapable of disclosing or suggesting at least one feature of Applicants' invention as recited in the independent claims, and so fail to render obvious the invention as recited in the independent claims, or their respective dependent claims. MPEP § 2143.03.

Claims 5, 15, 21, and 29

These claims were rejected under 35 U.S.C. § 103(a) as being unpatentable over Whitehead and Tuch in view of U.S. Patent No. 5,960,005 of Moteki et al. (hereinafter "Moteki"). These claims depend from independent claims discussed above. The deficiencies of Whitehead and Tuch are discussed above with respect to the independent claims. Moteki fails to cure the deficiencies of Whitehead and Tuch. Moteki appears to describe a system that has a central device that sends carrier-level information to devices in a network. At most Moteki appears to disclose external commands to adjust a carrier level, but fails to disclose or suggest basing a transmission characteristic of one device on the transmission characteristic of another. Thus, whether alone or in combination, the cited references are incapable of disclosing or suggesting at least one feature of Applicants' invention as recited in the independent claims, and so fail to render obvious the invention as recited in the independent claims, or their respective dependent claims. MPEP § 2143.03.

Claims 8, 9, and 12

These claims were rejected under 35 U.S.C. § 103(a) as being unpatentable over Tuch in view of U.S. Patent No. 5,553,316 of Diepstraten et al. (hereinafter "Diepstraten"). These claims are not rendered obvious by the cited references for at least the following reasons.

Of these claims, claim 8 is independent, and recites features directed to "determine an updated PCS characteristic for the network element **based at least in part on the determined PCS characteristic for the network element and the received PCS characteristic of the neighboring network element....**"

Similar to the independent claims discussed above, while claim 8 is not identical in language to the above claims, the discussion above applied equally well to this claim. Tuch fails to disclose or suggest basing a PCS characteristic on a PCS characteristic of a network element and a PCS characteristic of a neighboring network element. Diepstraten suffers at least the same defect as Tuch. Whether alone or in combination, the cited references fail to disclose or suggest at least the claimed feature of basing a PCS characteristic on a PCS characteristic of a network element and a PCS characteristic of a neighboring network element, and so fail to render obvious independent claim 8. See MPEP § 2143. The remaining claims are dependent from claim 8, and so are nonobvious over the cited references for at least the same reasons as claim 8. MPEP § 2143.03.

Claims 10 and 11

These claims were rejected under 35 U.S.C. § 103(a) as being unpatentable over Tuch and Diepstraten in view of Moteki. The merit of each of these references is discussed above. Each reference fails alone, and the references fail in combination, to disclose or suggest at least one feature of the invention as recited in independent claim 8, and so fail to render obvious the invention as recited in these dependent claims.

CONCLUSION

For at least the foregoing reasons, Applicants submit that the rejections are overcome and respectfully request that the rejections be withdrawn. Therefore, all pending claims are in condition for allowance, and such action is earnestly solicited. The Examiner is respectfully requested to contact the undersigned by telephone if such contact would further the examination of the present application.

Please charge any shortages and credit any overcharges to our Deposit Account number 02-2666.

Respectfully submitted,
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Date: May 6, 2008

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I hereby certify that this correspondence is being submitted electronically via EFS Web on the date shown below.

Date: 05.06.08

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